

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

- - - - - x  
UNITED STATES OF AMERICA, | CRIMINAL NUMBER  
Plaintiff | 3:06CR161-7 (EBB)  
  
VS. |  
  
RICHARD CACCAVALE, | July 12, 2007  
Defendant |  
- - - - - x

Federal Building  
141 Church Street  
New Haven, Connecticut

SENTENCING

Held Before:

The Honorable ELLEN BREE BURNS,  
Senior U.S.D.C. Judge

Copy

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15                    By: RICHARD R. BROWN, ESQ.

16            Also Present:

17                    Stephen Kelleher  
18                    Federal Bureau of Investigation

19                    Ray Lopez  
20                    U.S. Probation Office  
21  
22  
23  
24  
25

1 (Hearing commenced: 10:36 a.m.)

2

3 THE COURT: Good morning.

4 MR. BROWN: Good morning.

5 MR. MILLER: Good morning, your Honor. The  
6 Government's ready.

7 THE COURT: Mr. Brown, have you had an  
8 adequate opportunity to read the Government's  
9 memorandum? It just came out yesterday.

10 MR. BROWN: First of all, good morning, your  
11 Honor. Attorney Richard Brown, your Honor, along  
12 with my client, Mr. Caccavale, who's present and  
13 prepared for sentencing.

14 Your Honor, prior to today's proceedings, I  
15 have had the opportunity to review the presentence  
16 report with my client, your Honor, to go over it  
17 carefully. There are a couple of issues here that  
18 I just wanted to discuss briefly, but, as usual,  
19 Mr. Lopez has done a fine job in terms of being  
20 complete.

21 THE COURT: So you want a discussion but not  
22 objections, is that what you're telling me?  
23 Because I don't think you filed any objections;  
24 did you?

25 MR. BROWN: Well, your Honor, the only issue

1           was really one on the issue of role in the  
2           offense, and it has to do, your Honor, with the  
3           issue of whether or not my client would have a  
4           two-point enhancement for his role in the offense  
5           or Mr. Lopez had brought up the question of maybe  
6           it should be three points due to the number of  
7           individuals in the conspiracy. I would just note  
8           by way of background on that point, your Honor --

9           THE COURT: Before you proceed, the first  
10          question I asked you was did you read the  
11          Government's memorandum, because it just came out  
12          yesterday. I want to be sure --

13          MR. BROWN: I misunderstood, your Honor. I'm  
14          sorry.

15          THE COURT: The Government filed a memorandum  
16          yesterday.

17          MR. BROWN: Yes, your Honor. And thank you,  
18          your Honor. Not only did I read it, your Honor,  
19          but I discussed it at length with my client, your  
20          Honor. And the fact that it came out yesterday is  
21          of no consequence relative to us being prepared,  
22          your Honor.

23          THE COURT: Okay. Fine.

24          MR. BROWN: He had told me that it was  
25          coming, and we discussed the nature of it before

1           it was published.

2           THE COURT: All right. I'm sorry to  
3           interrupt you, but I wanted to be sure that you  
4           had an opportunity to see that.

5           MR. BROWN: Yes, your Honor. So on the  
6           presentence report, I want to note for the record,  
7           your Honor, that there was just a couple of minor  
8           things, and I presented a letter -- I believe I  
9           wrote a letter to Mr. Lopez, your Honor, referring  
10          to hostile objections. I wrote a letter on or  
11          about May 7, your Honor, and I don't know -- the  
12          way I work, your Honor, is that, after I review it,  
13          I don't communicate directly with the Court but  
14          rather issue a letter to Mr. Lopez, probably, and  
15          the Government.

16          In that letter I pointed out that there are  
17          certain concerns I had, your Honor. The first one  
18          having to do with whether it should be a two- or  
19          three-point enhancement. And on that, I just want  
20          to put, by way of background, that I wasn't  
21          necessarily satisfied that my client was a leader  
22          or manager or supervisor at all. Mr. Lopez -- I'm  
23          sorry -- Mr. Miller thought, well, you know, I  
24          have an argument that maybe it should be higher  
25          than two points. So we went back and forth.

1           My recollection -- maybe Mr. Miller has a  
2           different recollection -- was that, based upon --  
3           even though there's a conspiracy with -- and in  
4           this conspiracy with others, there's a lot of  
5           people. As related to my particular client, it's  
6           a more narrow group, sort of like a subgroup of  
7           the overall group.

8           And Mr. Miller and I agreed, your Honor, that  
9           compromise was perhaps the best order that would  
10          be fair to both the Government and the defendant,  
11          and subject to the Court's acceptance, of course,  
12          that we both would ask the Court to put a  
13          two-point enhancement, your Honor. And I would  
14          not argue for less, and Mr. Miller is not going to  
15          argue for more, I believe.

16          So while the point is well taken, I believe  
17          that there's a justifiable exception as to why it  
18          should be less than five members of this  
19          particular subset of the overall RICO conspiracy,  
20          your Honor. So that's -- that was Paragraph 25.

21          Minor points, Paragraph 40 at the bottom  
22          line, is that, Mr. Lopez, at some point,  
23          apparently had difficulty locating Lincoln High  
24          School, your Honor.

25          THE COURT: It was found.

1 MR. BROWN: Your Honor, I'm happy to report  
2 there is such a school, and I think we provided  
3 the information on that point.

4 Finally, your Honor -- again, that's a very  
5 minor point. Paragraph 43, the case that my  
6 client had a past check-cashing business. He did  
7 not own it, your Honor, but he did indeed work  
8 there. I'm sure my client had not been clear in  
9 his information he gave to Mr. Lopez on that  
10 point, your Honor.

11 THE COURT: I think the presentence report  
12 has been revised to effect those.

13 MR. BROWN: Yes. And so those are the only  
14 concerns we have, your Honor, on the presentence  
15 report.

16 THE COURT: Okay. I've read your memorandum,  
17 sir, and I'll entertain your remarks.

18 MR. BROWN: Sure. Your Honor, there's been  
19 certainly a lot written about this particular  
20 case. There's certainly a lot of defendants. I  
21 know some of them have been sentenced, and there's  
22 a lot more to come down the road. But I do know  
23 this Court well enough to know that the Court will  
24 treat each person, including my client,  
25 separately, depending upon many factors, including

1           role in the offense, but also hopefully take into  
2           consideration my client's background and, you  
3           know, what led him to this day and what other  
4           attributes does he have in terms of positive or  
5           negative.

6           And I would note, your Honor, my client is  
7           48 years of age. This is the first time he's ever  
8           been in a criminal court. And he started working  
9           for the trash hauling business -- this present  
10          deposition -- in about the year 2000; that as I  
11          indicated in my report, prior to that he's had a  
12          series of jobs. He only has a high school -- I  
13          shouldn't say "only" -- has a high school  
14          education, but he does not have any advanced  
15          degrees or any degrees at all other than that  
16          particular diploma.

17          Notwithstanding that fact, however,  
18          Mr. Caccavale has been the kind of person, your  
19          Honor, to always seek employment and always live  
20          up to his responsibilities. I have some people  
21          that will be speaking in a few moments, but I want  
22          the Court -- I want to emphasize to the Court,  
23          your Honor, that he is a hard working individual.  
24          He is also a family person.

25          I will be having an ex-wife speak today, your



1 Honor. Normally, the ex-wives are on the other  
2 side, sitting right next to the prosecutor -- you  
3 know, you can't lock this guy up long enough kind  
4 of mentality. I'm happy to report that that's not  
5 the situation. And in my estimation -- and she'll  
6 be speaking in a moment -- that's because he's  
7 lived up -- even though his former wife and  
8 himself have differences, some personal  
9 differences, they both accept the fact that they  
10 have a child and that child needs both their  
11 attention. And I'm happy to report that,  
12 notwithstanding any personal issues between him  
13 and his former wife, they have stood together in  
14 raising their child in a loving way, in a loving  
15 home. And even though the child is residing with  
16 his former spouse, nevertheless, as she may  
17 hopefully verify, there is a regular contact  
18 between the two. There is a bond between the two.

19 He himself has a 16-year-old son. His  
20 present wife, who is here today also, your  
21 Honor -- and with the information I gleaned from  
22 talking to her is that, with the present son --  
23 he's not abusive to his wife, he's not abusive to  
24 his son. To the contrary, he's constantly in  
25 their lives, constantly trying to make for a

1           better life for his own children.

2           The reason I stress that is I personally  
3           believe, your Honor, that you can tell a lot about  
4           a person's character in terms of how they treat  
5           their own family in terms of when the doors are  
6           closed and, you know, you're in the confines of  
7           your own house. Sometimes, I think, that tends to  
8           reveal real character versus perhaps a face you  
9           have to put on when you're out in the business  
10          world or out trying to earn a living.

11          I think that it's fair for the Court not only  
12          to consider how they behave out in the business  
13          world, as we're here today for, but also, well,  
14          what kind of person are they at home behind closed  
15          doors in terms of character. Because,  
16          presumably -- one of the issues I know this Court  
17          is concerned about is, well, he's certainly going  
18          to have to be punished, but the degree of  
19          punishment is always up in the air. And,  
20          presumably, part of it is based upon, Am I going  
21          to see this person again? Is this the kind of  
22          person that appears to be a recidivist by nature?  
23          Is this the kind of person that, out in the  
24          streets, is perhaps going to commit additional  
25          types of crimes, whether it's this type of crime

1 or some other kind of crime? And, presumably,  
2 that would be factored into terms of the degree of  
3 severity in order to protect the public from those  
4 people that display an antisocial personality of a  
5 criminal nature.

6 And I would submit, your Honor, that in the  
7 48 years, number one, I think it speaks for itself  
8 that this is the first time he's appeared in a  
9 criminal court; second of all, your Honor, the  
10 fact that he is a hard working individual in the  
11 sense of he's always been employed. I think it's  
12 fair to take that into consideration; that he  
13 lives up to his financial responsibilities. The  
14 fact that he's been a good family man to his  
15 children shows a certain character. So I think  
16 those kinds of traits, your Honor, are also fair  
17 to take into consideration.

18 Now, your Honor, in this particular case,  
19 aside from what I referred to earlier, an issue  
20 has arisen, your Honor, and I just want to do it  
21 all at once, if I may, your Honor --

22 THE COURT: All right.

23 MR. BROWN: -- just to move this along, and  
24 that has to do with the question of acceptance of  
25 responsibility. Your Honor, a situation has

1           arisen from the time that this presentence report  
2           was issued until today. And the issue really is  
3           whether or not, under 3E1.1, my client should  
4           receive the three points for acceptance of  
5           responsibility.

6           Up until at least this presentence report was  
7           issued, I was certainly under the belief, your  
8           Honor, that -- the first disclosure was in April,  
9           and we both -- "we" being myself and the  
10          Government. I already articulated my responses to  
11          that. I don't recall receiving any letters,  
12          notifications from the Government, your Honor --  
13          that they took exception to Mr. Lopez's finding in  
14          the presentence report that, in his opinion, my  
15          client has quote/unquote clearly demonstrated an  
16          affirmative acceptance of responsibility and  
17          thereby recommends that the guidelines should  
18          include three points for acceptance -- three-point  
19          reduction for acceptance of responsibility.

20          Now, in order to earn that, it's clear, your  
21          Honor, that my client has to do a few things. The  
22          first thing he has to do, obviously, and in a  
23          timely fashion, has to notify the Government and,  
24          indirectly, I suppose, the Court, that he's  
25          willing to step up to the plate and plead guilty

1 to whatever offense it is the Government claims he  
2 may have done. In this case, it is clear that my  
3 client did that.

4 Second of all, my understanding of the rules,  
5 as it were, is that my client has to meet with the  
6 probation officer. Now, what's interesting is  
7 that when there's a change of plea, the Court  
8 always admonishes the defendant, including this  
9 defendant, that the probation officer works for  
10 the Court, but that one needs to be careful and  
11 one should certainly seek the advice of counsel in  
12 terms of discussing the events with the probation  
13 officer.

14 A good example might be where somebody has  
15 engaged in selling drugs and then goes, speaks to  
16 the probation officer, and discloses then that  
17 actually there were drug sales for the last  
18 20 years and there's an extra 20 kilos of cocaine  
19 or something that might ultimately result in a  
20 higher sentence. So there's always some  
21 reluctance, I suppose, to discuss the case with  
22 the probation officer because there's always those  
23 perils.

24 However, in this case, I can report, your  
25 Honor, having personally been there, that my

1 client did go and meet with the probation officer;  
2 that the probation officer, being an extremely  
3 experienced, skilled probation officer, in my  
4 opinion at least, asked a series of questions to  
5 satisfy himself that my client had indeed accepted  
6 responsibility. And by that I mean not just  
7 merely pleading guilty but articulating what he  
8 did to cause himself to find himself in a position  
9 of admitting to violation of federal law and  
10 exposing himself to a period of incarceration.

11 My impression, having done that, is  
12 consistent with what is in the presentence report;  
13 that is, the fact that my client did, as far as I  
14 know, answer all the questions put to him by  
15 Mr. Lopez, who had a chance prior to that and who,  
16 I believe, has been involved in other  
17 co-defendants' cases, and is extremely familiar  
18 with the facts of this particular case and felt  
19 that there was certain relevant points he needed  
20 to discuss with my client.

21 There was no time limit. There was no "You  
22 had a half an hour to talk about the case." We  
23 stayed there until Mr. Lopez -- it's time to leave  
24 my office. And I think Mr. Lopez got to the heart  
25 of the matter. And as a result of that, your

1 Honor, I believe that's why, in the presentence  
2 report, we find the recommendation by the U.S.  
3 probation officer for the three points.

4 Now, since that period of time, I was  
5 notified by the Government that they wanted to  
6 speak with my client. Additionally, they wanted  
7 to bring him in and discuss with him the matter  
8 under their -- I asked him, "Well, what  
9 justification is there for coming in to see you?"  
10 And and the response was -- and Mr. Miller can  
11 correct me if I'm wrong -- is that, "We believe  
12 that we have a right to ask him a series of  
13 questions under the concept of acceptance of  
14 responsibility."

15 I truthfully didn't disagree with that, and  
16 as a result of that we made arrangements to meet  
17 with Mr. Miller and Mr. Gustafson and agents of  
18 their office they deemed to be appropriate, and we  
19 did that today, your Honor.

20 Quite frankly, I don't think -- even though  
21 it was today, I'm not claiming that it would have  
22 mattered if it was last week or three weeks ago,  
23 your Honor, so I'm not making any claim it was  
24 last minute or anything. My guess it would have  
25 been the same questions.

1           At this meeting, my client was prepared to  
2           answer any questions as to what he did relative to  
3           the crime for which he finds himself facing this  
4           Court today. What he was not willing to do, in  
5           all candor, was to assist the Government in terms  
6           of what others may have done or to discuss the  
7           role of others in this offense.

8           My client's position is simply that he is  
9           here. He's accepting responsibility. He wants to  
10          make amends, get on with his life, but that --  
11          he's not employed by the Government. He's not  
12          asking for a 5K1 sentence modification for  
13          cooperation. There is no cooperation agreement;  
14          rather, he simply asked to be sentenced. And in  
15          the spirit of trying to earn the three points for  
16          acceptance of responsibility, we did have this  
17          meeting with the U.S. Attorney's Office.

18          In the office, Mr. Miller made clear to  
19          me that he -- and no surprise, because he had told  
20          me in advance he was going to do this -- a series  
21          of tapes, recorded conversations, that apparently  
22          the Government had recorded during the course of  
23          their investigation of ~~this entire matter~~, and  
24          started out by playing a couple of tapes. And my  
25          client did acknowledge that it was his voice on



1           some of the tapes, and was prepared, quite  
2           frankly, to acknowledge his voice on all of the  
3           tapes to the extent that his voice was on the  
4           tapes. But the Government was interested in  
5           knowing the names of people he was talking to.  
6           Presumably, other questions would follow from  
7           that.

8           My client did not feel, under 3E1.1, that he  
9           had -- could be compelled to answer those  
10          questions. And I would note simply for the  
11          record, your Honor -- I know the Court is well  
12          aware of all of this, but I'd like to put it on  
13          the record -- that in deciding whether or not to  
14          award my client the three points for acceptance  
15          and the timeliness of the change of plea, that he  
16          has to truthfully admit the conduct comprised  
17          under the offense of conviction. I think he's  
18          done that. I think Mr. Lopez has confirmed that  
19          he's acknowledged his responsibility. He did so  
20          in open court also, your Honor, on the change of  
21          plea.

22          But, however, I would also note that,  
23          according to Application Note One, that a  
24          defendant is not required to volunteer or  
25          affirmatively admit relevant conduct beyond the

1 offense of conviction in order to obtain the  
2 reduction.

3 Further, I would note, your Honor, that the  
4 defendant may remain silent with respect to  
5 relevant conduct beyond the offense of conviction  
6 without affecting his ability to obtain a  
7 reduction under that particular section.

8 I would also note, for better or worse, your  
9 Honor, that the sentencing judge is in a unique  
10 position to evaluate defendant's acceptance of  
11 responsibility; therefore, any appeals court would  
12 certainly give that great deference. And I would  
13 submit, your Honor, that he has met that threshold  
14 task.

15 I guess it's a fine line, your Honor, one  
16 draws as to what's enough and whatnot, and I  
17 suppose to some degree it's subjective. My guess  
18 is with the Government it's never enough. No  
19 matter what questions are asked, there's always  
20 another question. There's just one more question,  
21 just one more co-conspirator, just one more this,  
22 one more that.

23 From our point of view, acceptance of  
24 responsibility cannot and should not be confused  
25 with 5K1. This isn't about other people. It's

1           about the defendant's role. And really, what it's  
2           really about, in my opinion, as one of the  
3           fundamental concepts of federal sentencing, and  
4           presumably state sentencing, is does a person  
5           really comes to this court prepared to accept  
6           responsibility for what he's done. Does he  
7           acknowledge that what he did was wrong; that he  
8           violated the law and that he knew at the time that  
9           he did it; and, is he jerking the Court around in  
10          the sense of making them go through the charade of  
11          a trial; is he getting up on the stand and saying,  
12          "I didn't do it," and then the jury comes back and  
13          then he says, "I'm sorry" or something like that.  
14          None of that occurred, of course, in this case.

15                 The -- it's really we're talking about two  
16          points. The third point, of course, is for the  
17          timeliness; although, I do acknowledge, your  
18          Honor, that it appears under federal law that  
19          unless you get the first two points, you really  
20          can't get the third one. I think that's in there,  
21          and that was discussed this morning. And in  
22          reviewing it I have to agree that's probably the  
23          law, your Honor.

24                 But what we're talking -- but we're really  
25          talking about the acceptance. It's two points,

1           and it's not a lot of points. It makes a  
2           difference to a defendant. But it's there really  
3           just try to get that defendant to step up to the  
4           plate and accept responsibility. It's not there,  
5           in my opinion, to be used as a tool by the  
6           Government in a continuing investigation of  
7           others. And that's why it doesn't penalize -- it  
8           clearly articulates it in the notes -- a person  
9           for not helping the Government in their  
10          prosecution of others.

11                 Obviously, to start asking questions about --  
12          by way of example -- tape recorded conversations  
13          and what -- who else was there and what did they  
14          do and what was their connection -- you know, you  
15          can ask it, I suppose, in a way, "What was your  
16          connection?" But since the defendant's already  
17          pled guilty, it's not going to further the  
18          knowledge of the defendant, because they already  
19          have that information. What they're really trying  
20          to do is further the knowledge of others and  
21          others' action and their role in the offense at  
22          hand. And I'm saying that's not the purpose of  
23          this particular session.

24                 So going in and talking to the probation  
25          officer and answering his questions -- his role,

1           Mr. Lopez's role, as I perceive it, your Honor, is  
2           he's not an investigator. He's not out trying to  
3           solve crimes. He's trying to give the Court  
4           information about this particular defendant --  
5           background information, what he did in the offense  
6           and why the Court should sentence this way as  
7           opposed to that way. That's his role. And that's  
8           what acceptance of responsibility is all about.  
9           It's not to be used, in my opinion, as an  
10          investigative tool.

11                 So when you come into a U.S. Attorney's  
12          Office and they sit down and they have this nice  
13          little computer and they've got all the things  
14          and -- the Government's going to play some tape  
15          recordings today, of not a particularly pleasant  
16          nature, I might add, from my client's point of  
17          view -- and start asking, Well, who else did this  
18          and why did this happen and why did that happen,  
19          but put it in the context of -- or claiming to put  
20          it in the context of, Well, what did you say and  
21          who are these other people you were talking to.

22                 I guess you could try to phrase questions to  
23          make it look like you really only are pursuing the  
24          relevant conduct when, in fact, what you're really  
25          doing, of course -- because why else would you do

1           it? He's going to be sentenced. He's already --  
2           the Court's already accepted the plea. There  
3           isn't anything else the Court needs in terms of  
4           what he did. It's really nothing more, in my  
5           opinion, than a disguised -- albeit, poorly  
6           disguised -- attempt to use it as a last minute  
7           investigative tool to force defendants, in this  
8           case, Mr. Caccavale, to become, unwittingly, an  
9           informant for the Government or assistant to the  
10          Government. And I guess if I was going to apply  
11          for a 5K1 it would be appropriate, but it's not in  
12          this case.

13                 So I'm not going to belabor the point, your  
14          Honor, other than to say I believe he's met the  
15          criteria. I would ask the Court to adopt the  
16          recommendation presented by the probation officer  
17          as -- in terms of those three points.

18                 Now, in terms of what would be an appropriate  
19          sentence, if the Court were to see fit to sentence  
20          him under the guideline range of 18. I believe,  
21          your Honor, the guideline range is somewhere  
22          between 27 and 33 months with fines, I believe, of  
23          between 4,000 and \$40,000. Obviously, I'm not  
24          going to beat the dead horse to death any more in  
25          the sense that we're looking for a sentence on the

1 low end of that particular range. And the reason  
2 I'm asking for that is because of the fact that he  
3 has accepted the responsibility. You're going to  
4 hear him say a few words to reaffirm that -- and  
5 the fact that this is his first time. And the  
6 fact, your Honor, is that, while it is true there  
7 was some property damage, the property damage --  
8 this was some tires of a vehicle that he had  
9 deflated, I think, with a knife or some sharp  
10 object, your Honor. And it's clear that this was  
11 done to discourage a particular individual from  
12 certain conduct that my client had -- took  
13 exception to. And, obviously, that was wrong.

14 It's also true, your Honor, that there are  
15 various conversations, some of which the  
16 Government is going to play, that concerns itself  
17 with threatening some sort of violence towards  
18 others. And, again, he pleaded guilty, and he's  
19 going to accept responsibility for that. But I  
20 think it's also fair -- it's also appropriate to  
21 take into consideration that it certainly does not  
22 appear, from what I gleaned of this, that he  
23 actually followed through with any physical harm,  
24 or you probably would have seen that in the basis  
25 for the change of plea.

1           Sidebar on one particular point. One of the  
2           tapes that the Government wants to play for you is  
3           actually a tape the Court heard before the very  
4           first day that my client was in this courthouse.  
5           And as the Court may well remember, last year,  
6           when you were inundated with what appeared to be a  
7           million defendants, in an attempt to hold  
8           Mr. Galante without bond -- or I think it was --  
9           my recollection was, because I was sitting in the  
10          back row there with Mr. Keefe, I think, if I  
11          recall, in a different courtroom -- and this tape  
12          was played.

13                 And this tape, as I since found -- I didn't  
14          know that day -- turns out to be where my client  
15          was relating a conversation with another defendant  
16          that was being recorded, of course unbeknownst to  
17          my client, where my client was breaking or --  
18          whatever -- about threatening another individual  
19          who apparently was having some sort of personal  
20          relationship with the other person on this call's  
21          significant other; however, none of that had  
22          anything to do with the conspiracy. It was not in  
23          furtherance of the conspiracy; rather, it was in  
24          furtherance of this other person's personal life.

25                 Now, I'm not a prude, your Honor, but it's



1           actually pretty offensive, and it was wrong. So  
2           I'm not excusing it, your Honor, but I question  
3           the propriety of playing it for this Court. I  
4           question why it is necessary to play this tape.  
5           If they want to show that, on occasion, my client  
6           had threatened people, I think we've already  
7           acknowledged that. But what I think it does show  
8           is the desperation of the Government to come up  
9           with some bad acts by my client. Because instead  
10          of taking an act in the framework of the  
11          conspiracy to which he pleaded guilty, the  
12          Government, in its desperate state to show what an  
13          evil person my client is, is going to try to  
14          convince the Court of that by showing what he did  
15          outside the conspiracy in some personal matter,  
16          where he wrongly, I might add, assisted some  
17          person in trying to resolve some personal issues  
18          with some people. It was totally wrong, but my  
19          point is we're not here because of that.

20                 They point out, in his brief to the Court,  
21                 that there's some incident involving an automobile  
22                 that allegedly my guy got a couple of thousand  
23                 dollars for to help in some sort of fraud or  
24                 something like that. There isn't any claim that  
25                 that's part of this conspiracy. Yet the

1 Government -- I don't want to use the word  
2 "sneaks" -- it in, but puts it in there, and I  
3 question why.

4 THE COURT: Perhaps to show the character of  
5 your defendant.

6 MR. BROWN: Perhaps, your Honor. But my  
7 point is that -- and I'm not saying it didn't  
8 happen. What I'm saying is -- and I would ask the  
9 Court to ask this -- is that, if he's as bad as  
10 the Government would like you to believe in terms  
11 of this conspiracy, then why not use acts that he  
12 did in the conspiracy? And the answer to that is  
13 they don't have any. So -- or they don't have any  
14 that measure up to this -- these acts, I guess;  
15 otherwise, why, of course, would they use them.

16 So all I'm saying is that -- I'm not saying  
17 he did nice things or anything else, and he's  
18 wrong. He's going to go to prison for that. I  
19 know that. But what I'm just suggesting to the  
20 Court is that when the Government gets up here and  
21 starts arguing how evil my client is, what the  
22 examples they use aren't part of the conspiracy,  
23 then I seriously question whether or not there's  
24 as much merit to their claim as they would like  
25 this Court to believe. And that's my really -- my

1           only point. I'm not excusing the conduct. It's  
2           offensive. We all agree with that. My client  
3           certainly doesn't try to minimize any of those  
4           things, your Honor.

5           I think, your Honor, that I've basically  
6           concluded except to say that on the fine part,  
7           your Honor -- which we lawyers always forget to  
8           mention -- to the extent that the Court fines my  
9           client, your Honor, what the Court's really doing  
10          is taking away from whatever money or resources  
11          they might have for my client's wife and child, to  
12          continue with child support and to continue with,  
13          you know, the household well. The primary  
14          breadwinner, my client, your Honor, is certain --  
15          whatever fine the Court deems to be appropriate,  
16          your Honor.

17          So I would ask, your Honor, that -- deficits  
18          are already big enough. I'm not too sure how much  
19          impact any fine that the Court puts on will have  
20          on the budget, your Honor, or the -- the  
21          deficiency in our spending, your Honor, but it  
22          will have a major impact, not just on my client  
23          but also on his family. So I would ask, your  
24          Honor, for whatever the Court sees fit to impose  
25          but have it towards the bottom end of the scale,

1                   your Honor, between, I believe, 4,000 and \$40,000.

2                   Your Honor, I have a few witnesses, if I may,  
3                   your Honor.

4                   THE COURT: I do want to hear from your  
5                   client at some point.

6                   MR. BROWN: Oh, yes, your Honor. But I  
7                   usually like to do that after --

8                   THE COURT: You want to do that. Okay.

9                   MR. BROWN: -- the others -- thank you.  
10                  It'll only be a moment, your Honor.

11                  THE COURT: That's all right.

12                  MR. BROWN: Would you just stand up here,  
13                  identify yourself, spell your last name and tell  
14                  the Court what your relationship is to the  
15                  defendant.

16                  MS. BISGIER: Yes. My name is Renee Bisgier.

17                  THE COURT: Talk into the microphone, ma'am.

18                  MS. BISGIER: My name is Renee Bisgier,  
19                  B-I-S-G-I-E-R. I am Richard Caccavale's ex-wife.

20                  MR. BROWN: What is it you'd like the Court  
21                  to know about the defendant?

22                  MS. BISGIER: Rick Caccavale's a great  
23                  father. We had our differences. We split. But  
24                  he never shunned his obligation as a parent. I  
25                  have never had any problem financially with him.

1 He has always taken his part in responsibility.  
2 Emotionally, mentally, he has been there for his  
3 son from day one. Since the day we split, he had  
4 never, ever missed a phone call. Whether he was  
5 working late, if he was at a meeting, he always  
6 called. If he was on vacation, my son always got  
7 a phone call at night or some point throughout the  
8 day.

9 He has been a great father. He has been a  
10 great support system for him. He has shown up at  
11 every sport event for school, every sports award  
12 night or anything else that went on. He supported  
13 me when I sent my child to Hebrew school and had  
14 him Bar Mitzvahed, which was way above and beyond  
15 his responsibility. He has never, ever let him  
16 down.

17 I don't know what this is going to do to my  
18 son emotionally when he is sentenced. I ask the  
19 Court, with that in mind, with the mental and  
20 emotional stability of my son, of our son, to  
21 please go lenient, give the minimum possible.  
22 He's a good kid, thinking of college right now and  
23 getting ready for the next phase of his life, and  
24 he's going to have to do that without his father.  
25 But the sooner his father can be returned to him

1           would be wonderful, and I'd be grateful.

2           THE COURT: Thank you, ma'am.

3           MS. BISGIER: Thank you.

4           MR. BROWN: Sir, would you identify yourself  
5 for the Court, spell your last name and state your  
6 relationship to the defendant.

7           MR. VELTRI: My name is Mike Veltri,  
8 V-E-L-T-R-I. I've known Ricky about 30 years. He  
9 was employed with me when I was running the West  
10 Chester Motor Vehicle, and Ricky was always very  
11 good with the people or myself. In fact, when the  
12 State took over the Motor Vehicle in West Chester,  
13 Ricky and I were in business for a short time. He  
14 was trying to do what I was doing when I was in  
15 business. It just didn't work out for Ricky as  
16 well as it should have because the whole system  
17 changed when he started. But I must say Ricky's  
18 always been a good friend. A good son, also, and  
19 a good family man. I have to say really he's --  
20 with his wife and with his children, he's very  
21 good. He's a good person. Thank you.

22           MR. BROWN: Sir, would you identify yourself  
23 for the Court and spell your last name and  
24 indicate your relationship to the defendant.

25           MR. MCKENNA: My name is Paul McKenna,

1 M-C-K-E-N-N-A, and I been a friend of Ricky's for  
2 almost 30 years.

3 MR. BROWN: What is it you'd like the Court  
4 to know about Mr. Caccavale?

5 MR. MCKENNA: Well, I have a letter if -- for  
6 your consideration, and I'll give that to you.  
7 But what I'd like you to know is I know the real  
8 Ricky. We've been friends since we were  
9 teenagers. We spent a lot of years cultivating a  
10 relationship, and over those years I was able to  
11 watch him raise his son, have a wonderful  
12 relationship with Renee and, subsequently, with  
13 Donna. I watched him help people all along the  
14 way. I've seen what a great family man he was and  
15 what a wonderful person when he was.

16 I own a restaurant. I've always been in that  
17 business. And in that business we spent a lot of  
18 time raising money for various charities, and  
19 Ricky was always a wonderful part of it.

20 I was never a great public speaker, and Ricky  
21 was always the one that came to my aid in the --  
22 during those events. And he would help,  
23 tremendously.

24 All I could say is that I would hope that you  
25 could be lenient and return him to his family as

1           soon as possible.

2           THE COURT: Thank you.

3           MR. McKENNA: And if I could just leave that  
4           with you.

5           MR. BROWN: Your Honor, if I may just -- it's  
6           a brief one, (handing).

7           THE COURT: Thank you.

8           MR. BROWN: Thank you, your Honor.

9           Ma'am, would you identify yourself and -- you  
10          don't have to spell your last name, but state your  
11          relationship.

12          MS. CACCAVALE: My name is Donna. I'm  
13          Richard's wife. I just want the Court to know  
14          that he was a great husband, never was abusive to  
15          me in any way, very caring husband. He's been a  
16          great father to Daniel, always been there. And  
17          he's just very family oriented. That's all I  
18          have.

19          THE COURT: Thank you.

20          MR. BROWN: Your Honor, if the Court may, the  
21          defendant has a few words he'd like to say.

22          THE COURT: First of all, sir, have you read  
23          your presentence report?

24          THE DEFENDANT: Yes, ma'am.

25          THE COURT: Did you have any objections to



1 anything in that report?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Have you discussed it with  
4 Mr. Brown?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Then you may proceed.

7 THE DEFENDANT: Your Honor, I'd just like to  
8 say I accept full responsibility for myself. I'm  
9 sorry for what I have done. I apologize for any  
10 harm I done or anything I've done, or any harm I  
11 may have caused to anybody.

12 My biggest thing is to get back to my family  
13 and start my new life and just help get my family  
14 back, supporting them and take care of them and be  
15 with my son and my wife. I just wanted to say I  
16 just accept -- I take full responsibility for  
17 myself.

18 THE COURT: Thank you, sir.

19 MR. BROWN: Thank you, your Honor. We're  
20 done.

21 THE COURT: May I hear from the Government,  
22 please.

23 MR. MILLER: May I just have a moment, your  
24 Honor?

25 THE COURT: Yes.

1           MR. MILLER: Thank you, your Honor. Raymond  
2 Miller for the Government. I'll try to address  
3 the points Mr. Brown made in the same order.

4           First, with respect to the role. I agree  
5 with Mr. Brown that only a two-point enhancement  
6 is appropriate. The Government stands by the plea  
7 agreement in this case.

8           The reason I believe a two-point enhancement  
9 is appropriate is -- I'm certainly going to have a  
10 lot of things to say about Mr. Caccavale's conduct  
11 in a few minutes, but what we thought was fair and  
12 equitable in this case is, if you look at  
13 leadership role that Mr. Caccavale played, the  
14 Government's view, it was focused on one aspect of  
15 the RICO conspiracy, as -- I'll describe the RICO  
16 conspiracy involved price fixing, bid rigging, all  
17 sorts of things.

18          Also, one branch of that, a very important  
19 branch, are threats and planned assaults. And as  
20 I'll also describe, Mr. Caccavale was instrumental  
21 in planning at least three assaults. And in those  
22 assaults he exercised a leadership role; for  
23 example -- and I'll talk more about this in a  
24 moment -- when one co-conspirator fell out of  
25 favor, Mr. Caccavale was assigned the task by

1 another co-conspirator of setting up an assault.  
2 He contacted an individual to set up that assault,  
3 and, likewise, another assault. So I believe that  
4 two points is a fair treatment of the defendant  
5 under the leadership role.

6 With respect to the acceptance of  
7 responsibility, just a couple of things of  
8 background for the record. I contacted Mr. Brown  
9 earlier this week and, pursuant to Paragraph 2 of  
10 the third page of the Government's plea letter,  
11 which says the Government's recommendation at  
12 least is conditional upon the defendant timely  
13 providing complete information to the Government  
14 concerning his involvement in the offense to which  
15 he is pleading guilty, we discussed Mr. Caccavale  
16 coming in and meeting with the Government, and we  
17 scheduled that today; and we did have that meeting  
18 today.

19 At that meeting, Mr. Caccavale answered a few  
20 basic questions, but to facilitate that discussion  
21 I played -- the Government played a tape, which  
22 I'll play for the Court on another matter in a  
23 moment. And Mr. Caccavale, after talking with his  
24 lawyer, identified his own voice on that tape but  
25 declined to answer any questions, including

1 identifying the voices of anybody else on that  
2 tape.

3 My notes reflect, and Mr. Brown is happy to  
4 weigh in on this, is that Mr. Caccavale, in my  
5 presence, told his lawyer -- looked at his lawyer  
6 and said, "I don't want to do this." So the  
7 question for the Court: Should he get acceptance  
8 of responsibility? I don't believe it satisfies  
9 the requirements under 3E1.1, your Honor.

10 What -- the offense this defendant pled  
11 guilty to was a conspiracy to violate RICO. I  
12 think it is beyond argument that the issue  
13 involving the vandalization of Trash Hauler B's  
14 truck -- and what happened downstream from that is  
15 actually Mr. Caccavale communicated with Trash  
16 Hauler B and reported the results of that to  
17 another member of the conspiracy. That is, in  
18 argument, part of the conspiracy. In fact, it was  
19 part of the Government's proffer at the plea  
20 agreement.

21 I don't think he has accepted responsibility  
22 in that -- the basic question: You formed a  
23 conspiracy. Who are your co-conspirators? Who's  
24 this individual on the tape? Declining to answer  
25 those, saying that is not enough, does not satisfy

1 acceptance of responsibility.

2 It's a difficult position for the Government  
3 to take, your Honor. I've never taken this  
4 position before. I don't think the burden for  
5 acceptance of responsibility is that high. And I  
6 agree with Mr. Brown. It's certainly not to the  
7 level of a 5K or even safely valve.

8 The acceptance of responsibility is properly  
9 construed on the defendants, as outlined in 3E1.1,  
10 "Truthfully admitting to the conduct compromising  
11 the offenses of conviction and truthfully  
12 admitting or not falsely denying additional  
13 relevant conduct," for which he is accountable for  
14 under 1B1.3, which is the relevant conduct  
15 section.

16 As Mr. Brown accurately read, he's not  
17 required, and the Government is not insisting,  
18 that he should not receive acceptance for  
19 responsibility of this. He's not required to  
20 admit to affirmatively relevant conduct beyond the  
21 offense of conviction. There's no argument here  
22 that this meeting with Mr. Caccavale didn't get  
23 very far; that he didn't even answer the most  
24 basic questions of the conspiracy count he pled  
25 to.

1           Your Honor, I think it's not an investigative  
2           tool by the Government. It's an action. It's an  
3           effort to see whether the defendant has come to  
4           terms with what he's done; will admit with what  
5           he's done.

6           What this defendant did is he conspired with  
7           others to violate RICO. He did that, among other  
8           things, by threatening a hauler and delivering  
9           messages to that hauler and reporting back the  
10          hauler's responses to another member of the  
11          co-conspiracy. That's at the heart of this  
12          defendant's relevant conduct. He doesn't want to  
13          do that. He won't even discuss that at all, your  
14          Honor. I don't think the bar is high here.

15          In terms of time issue, the Government is  
16          amenable to an adjournment of this proceeding to  
17          give him more time to rethink, whether it can be  
18          done by a term of proffer or letter, whatever that  
19          is. Mr. Brown, a very experienced defense lawyer,  
20          has indicated to me that he doesn't think his  
21          client's position will change, and I accept that.  
22          So that's what brings us here today.

23          THE COURT: So your discussion relates to the  
24          additional third point; is that right?

25          MR. MILLER: The --

1           THE COURT: You're not challenging the  
2           totality of acceptance, you're suggesting the  
3           additional third point --

4           MR. MILLER: No. I'm, unfortunately,  
5           challenging the totality of acceptance. My  
6           understanding of the acceptance is that you get  
7           two points for accepting responsibility --

8           THE COURT: Right. Right.

9           MR. MILLER: -- and then you get a third  
10          point for -- if you don't put the Court or the  
11          Government through the burden of trial.

12          I agree with Mr. Brown. Unequivocally, he  
13          did not -- he timely notified us of his intent to  
14          plead guilty. He gets credit for that.

15          THE COURT: So we're talking about the third  
16          point?

17          MR. MILLER: That's the -- well, I think  
18          that's the third point, but the core of the first  
19          two have to do with acceptance of responsibility.  
20          That's what I'm challenging. That's what,  
21          unfortunately, I don't think he satisfied.

22          THE COURT: So you think he should have no  
23          acceptance at all?

24          MR. MILLER: I think -- I don't object to him  
25          getting acceptance for -- just a minute, your

1 Honor.

2 I just consulted with Mr. Lopez, who's very  
3 experienced, and I -- as a legal matter or factual  
4 matter -- I should be clear. As a factual matter,  
5 he should get that third point, but according to  
6 the guidelines he can't get there until he gets  
7 the first two. So he -- unfortunately, if you  
8 don't get the first two, you don't get any. So he  
9 gets zero in this case.

10 THE COURT: I was just not clear on whether  
11 you were challenging the entire adjustment for  
12 acceptance of responsibility or simply the one the  
13 Government would be moving for that third point.  
14 You're challenging the entire --

15 MR. MILLER: I am. And the reason I'm  
16 challenging that is, if he satisfied the basic  
17 1B1.3 then I would move for the third point.  
18 And -- but the way the guidelines work is I can't  
19 move for that third point --

20 THE COURT: That's right.

21 MR. MILLER: -- without him qualifying first  
22 for the 1B1.3. If it were different, there would  
23 be a better situation. That's the way I  
24 understand it works, your Honor.

25 Again, my notes here from Mr. Brown, he talks



1           about scope and investigative technique. That's  
2           not this issue at all, your Honor. This is not an  
3           issue of scope. He refused to answer even the  
4           most basic -- address even the most basic points  
5           of his conduct. And that, your Honor, in the  
6           Government's view, is inconsistent with 3B1.1.

7           Now, with respect to the comments -- the  
8           prepared remarks I had involving Mr. Caccavale's  
9           conduct, I want to talk about a couple of things,  
10          your Honor. And this shouldn't take too long,  
11          because I filed -- the Government's filed an  
12          extensive memo outlining what it views to be  
13          Mr. Caccavale's relevant conduct.

14          There's really two points I want to make to  
15          your Honor that distinguishes this defendant from  
16          other defendants -- a more typical defendant in  
17          this RICO conspiracy, and I think these points,  
18          the other comments I make, warrant sentence at the  
19          top of the -- whatever applicable range the Court  
20          finds.

21          First of all, is his, Mr. Caccavale's, scope  
22          and breadth of involvement in a multifaceted  
23          conspiracy. This is a conspiracy, your Honor,  
24          that involves a number of mechanisms by which to  
25          achieve the goals of the racketeering

1 organization. The organization fixed prices.  
2 They used intimidation. They did property damage.  
3 They arranged for physical assaults when carters  
4 wouldn't go along with the unwritten rules of the  
5 property rights system.

6 And I think a lot of defendants in this case  
7 certainly engaged in one or more of those aspects  
8 of the property rights system. This defendant  
9 engaged in each and every one. His involvement  
10 spans everything I've just described. And I won't  
11 go through it at length because I -- we discussed  
12 it in our memo. He clearly was involved in price  
13 fixing, taking lists of customers to Hauler B. He  
14 clearly was involved in the intimidation; calling  
15 Hauler B, for example, at the direction of another  
16 co-conspirator and reporting back. And I'll talk  
17 more about that in a second.

18 He was clearly involved in the property  
19 damage, the violence that occurred here. He  
20 clearly and, I think, most remarkably for this  
21 defendant, was uniquely involved in planning for  
22 the physical assaults that this organization  
23 wanted to perpetuate.

24 On three occasions there was assaults planned  
25 or desired by other members of the conspiracy, and

1           what did those people do? They turned to Ricky  
2           Caccavale to carry them out. There was a -- as I  
3           alluded to earlier, there was a co-conspirator who  
4           fell out of favor, and it was determined that  
5           co-conspirator should receive some physical  
6           retaliation. Who -- when that decision's been  
7           made by the conspiracy, who carries it out? Ricky  
8           Caccavale.

9           On another occasion, as I alluded to in my  
10          sentencing memo, a member of the conspiracy was  
11          approached by a Connecticut politician and asked  
12          to pay a visit to a certain individual. In order  
13          to effectuate that, in order to carry that out,  
14          who does the organization turn to? Ricky  
15          Caccavale. And then Mr. Caccavale calls other  
16          people, other individuals, and arranges for debt  
17          building and agrees to pay \$500 -- I've talked  
18          about it all in my brief, your Honor. I won't  
19          talk about that much more.

20          And finally, when there's a -- one of his  
21          co-conspirators has a personal, romantic  
22          relationship in which he feels threatened, he  
23          wants a threat to be placed onto the potential  
24          suitor, who does he turn to? Ricky Caccavale.

25          So the first point, I think, that

1 distinguishes this defendant is the breadth of  
2 participation. The second point, your Honor, is  
3 the -- quite frankly -- the exuberance with which  
4 carries out his criminal conduct. He made calls,  
5 your Honor -- I'm going to play two -- that, I  
6 think, clearly show that he enjoyed his role as a  
7 trusted member of the inner circle. There's no  
8 question that he's a member of the inner circle of  
9 this conspiracy. In the Government's view,  
10 there's no question that he enjoyed that. It's  
11 something he relished.

12 I'm going to play two calls, your Honor. The  
13 first call is call 1819, and then the second call  
14 is 1959.

15 I think Mr. Brown had an objection to me  
16 playing call 1959. I don't know if you want to  
17 air that now or --

18 MR. BROWN: Your Honor, it's really -- it's  
19 really a reiteration of what I stated earlier.  
20 I'm not -- there's no question it's  
21 Mr. Caccavale's voice, your Honor. The incident,  
22 as characterized by the Government, is accurate;  
23 that is, that this concerned a personal situation  
24 with another co-conspirator, not evolving out of  
25 the conspiracy but rather a personal relationship

1           who had asked my client to have some words with  
2           the other individual in the hopes that he would  
3           stop seeing, I guess, this guy's girlfriend or  
4           somebody. I'm not sure who.

5           And I just object to it on the ground simply,  
6           your Honor, that it's not part of the conspiracy.  
7           I don't think the Government's claiming it's part  
8           of the conspiracy. The Government wants to show  
9           it for other reasons. But I just submit, your  
10          Honor, since it's not part of the conspiracy, it  
11          should not be played.

12          MR. MILLER: I agree with him on facts. I  
13          disagree with him on the law, your Honor. I think  
14          there's at least two reasons why this call is  
15          relevant to the proceeding today. First of all, I  
16          agree that the object of this threat or perceived  
17          violence is not directly related to the goals of  
18          the conspiracy. But what is, your Honor, is the  
19          interaction between the two co-conspirators.

20          As I said before, first, the -- this  
21          conspiracy involved a number of physical threats  
22          that were involved that were designed to further  
23          the objectives of the organization. Those -- some  
24          of those involve this exact same co-conspirator.  
25          So this is insight for the Court in terms of how

1           the members of the conspiracy interact with each  
2           other, how this conspiracy worked, what's the  
3           dynamic. I think that's relevant on that basis  
4           alone.

5           That aside, your Honor, since *Booker*, there's  
6           clearly been a renewed focus on 18 USC 3553(a),  
7           and that, your Honor, advises the Court that it  
8           should take the history and characteristics of the  
9           defendant into consideration when imposing  
10          sentence. I think that this call, in addition to  
11          my earlier reason, is probative of that. So I  
12          would ask permission to play that call.

13          THE COURT: I overrule Mr. Brown's objection.

14          MR. MILLER: Thank you. But where I'll start  
15          first is -- the first call I'm going to play is  
16          call 1819, your Honor. And just a little  
17          background on this call. This is a call between  
18          Mr. Caccavale and James Galante, and what this  
19          call is, in terms of a time context, is in  
20          reference to is, Mr. Caccavale -- there's lots and  
21          lots of other intercepted calls that I'm not going  
22          to play for the Court because they'd consume a lot  
23          of time.

24          Mr. Caccavale contacted Trash Hauler B on a  
25          number of occasions to basically get them to play

1 the game, to go along, to don't make a stupid  
2 decision. In this call, your Honor, what he is  
3 doing is he's reporting back to Mr. Galante the  
4 results of one of those calls. And the call is  
5 somewhat long, but I'm only going to play the  
6 first three minutes and two seconds for the Court.

7  
8 (A portion of Call 1819 was played for the  
9 Court.)

10  
11 MR. MILLER: Just to provide concepts to the  
12 Court, the first person who talked, to say he's  
13 all F'd up, the Government's position is that's  
14 Mr. Caccavale. The person answering, the  
15 Government's position, is that's Mr. Galante.  
16 It's also the Government's position that the  
17 person they're talking about, the "he," is Trash  
18 Hauler B. And this is after, the Government  
19 believes, Mr. Caccavale contacted Trash Hauler B  
20 to get him to comply with the property rights  
21 system.

22 What that is is Mr. Caccavale, in the  
23 Government's view, reporting back to Mr. Galante  
24 what he did in order to get Trash Hauler B in  
25 line. He's proud of it. He did a good job.

1 Mr. Galante even compliments him, saying words to  
2 the effect, "You did a good job, Syl [phonetic],"  
3 which is a nickname, the Government contends, that  
4 Mr. Galante and others used for Mr. Caccavale.

5 Again, with respect to his participation in  
6 different aspects of the conspiracy, this is one  
7 example where he's involved in sort of the price  
8 fixing, you know, keeping people in line with the  
9 property rights system. And as I said before,  
10 your Honor, there were a number of physical  
11 assaults planned during the course of the wire,  
12 and one of those involved the romantic rival with  
13 a co-conspirator. And I'll play that call now and  
14 then I'll wrap up my remarks, your Honor.

15 This is call 1959. I'm going to play the  
16 entire thing. And, again, what the background is  
17 here is, one of the co-conspirators -- and we've  
18 identified Ciro Viento in the Government's  
19 memorandum -- was having a relationship with  
20 another employee. A third party made what  
21 Mr. Viento perceived to be an overture to that  
22 party, and Mr. Viento was upset by that, thought  
23 it was inappropriate and asked Mr. Caccavale to do  
24 something; make a phone call, basically. And  
25 Mr. Caccavale did it.



1           What this call is is Mr. Caccavale reporting  
2           back to Mr. Ciro -- excuse me -- Mr. Viento about  
3           what he did during that call. It's call 1959,  
4           your Honor. And I just -- I will flag, for the  
5           members of the Court, there is some offensive  
6           language in here, but this is the defendant, your  
7           Honor.

8  
9           (Call 1959 played for the Court.)

10  
11           MR. MILLER: In the Government's view, that  
12           call represents two things, your Honor. What I  
13           heard there is, Remember my voice, I'm coming for  
14           you in a violent and threatening manner. That's  
15           the intimidation side of Mr. Caccavale.

16           What I also heard there, towards the latter  
17           part of the conversation, is almost a clinical  
18           discussion of, We have to do it now. Do you want  
19           me to arrange it? How are we going to do it? And  
20           it's Mr. Caccavale who's advancing, I think, at  
21           the end of the conversation the desire that the --  
22           the consult occur.

23           Now, Mr. Brown's going to stand up and say,  
24           None of these assaults occurred, your Honor, this  
25           is all just talk. Well, it's true. This is --

1           this is -- none of these assaults did occur.

2           That's absolutely true, your Honor. The reason  
3           why this assault, based on a personal reason, did  
4           not occur is unknown to the Government. We don't  
5           know, but it didn't occur. But I'll you right  
6           now, with respect to the assault on the target  
7           identified by the politician and with respect to  
8           the assault on the co-conspirator who fell out of  
9           favor, those assaults were in motion. The  
10          defendant called somebody named Uncle Tony on the  
11          phone and arranged for those; again, just like he  
12          used a building code. "I want to put foundations  
13          in. I want to put a deck in."

14                 The reason those two calls didn't occur, your  
15          Honor, quite frankly, is because of the actions of  
16          the Connecticut FBI, the Connecticut state police  
17          and the New York state police. The calls clearly,  
18          in the Government's view, indicated those were  
19          going to happen, and those law enforcement  
20          agencies took the proactive step to intervene in  
21          both of those to shut that down, your Honor.  
22          These were real assaults. They were being  
23          planned. The FBI stopped them, your Honor.

24                 This is an individual -- in closing, your  
25          Honor -- who was, as I said, involved in all

1 aspects. To date, he is plainly the most culpable  
2 defendant before you. Unquestionably, there will  
3 be culpable defendants. He's not the most  
4 culpable defendant in the conspiracy by any means.  
5 He's the first member of the inner circle. His  
6 expertise seems to be arranging physical assaults,  
7 but he also does price fixing and intimidation.

8 Your Honor, this defendant is someone who  
9 enjoyed his role, relished and nurtured his role  
10 in the conspiracy. This is a defendant that  
11 deserves a sentence at the top of the range of  
12 whatever range your Honor decides is appropriate,  
13 and also deserves a substantial fine. Thank you,  
14 your Honor.

15 MR. BROWN: If I may, your Honor.

16 THE COURT: Yes.

17 MR. BROWN: Your Honor, I'm simply going to  
18 focus on the acceptance of responsibility. Your  
19 Honor, the prosecutor, in reciting what occurred  
20 today, I believe left out a material point. And  
21 the point that was left out was that when we met  
22 with the prosecutors today, your Honor, my client,  
23 once again, as he had with Mr. Lopez, not only did  
24 he acknowledge his voice on the tape recordings --  
25 and we sat there for another hour, as I

1 represented to the prosecutor, your Honor -- would  
2 have acknowledged his voice on the other  
3 recordings, because it was his voice and he was  
4 ready to accept the fact that it was and not try  
5 to minimize it or anything else.

6 But the other thing, too, your Honor, was  
7 that he was asked again this morning about the  
8 role that resulted in the conduct, and that had to  
9 do with the destruction of the property by the  
10 tires. And he was asked specifically, you know,  
11 what he did. And he answered that question. He  
12 indicated that he had, along with others,  
13 destroyed these two tires, you know, by puncturing  
14 the tires; not hurting anyone in person but by  
15 puncturing the tires. So that when he, the  
16 prosecutor, indicates that he's not accepting his  
17 role, he's not answering this or that question, I  
18 would note that that's not accurate. What's  
19 accurate is, if you asked him a question about  
20 what he did, he was answering it.

21 When I look at 3E1.1, in the notes, it  
22 asks -- acknowledges whether or not a person  
23 truthfully admits his conduct. Well, if you ask  
24 him if he did something, he's admitting he did it.  
25 He's willing to state he did it. I don't know

1           what other words he can use other than say, Yes,  
2           it was me or, Yes, it's my voice or, Yes, I did  
3           this or, Yes, I did that; all reaffirming that  
4           which he told Mr. Lopez, your Honor; in other  
5           words, accepted his role, his responsibility for  
6           his role, acknowledged his role, acknowledged it  
7           to probation, acknowledged it to the Court today  
8           as well as in the change of plea, acknowledged it  
9           when the prosecutor asked it.

10           The only thing he didn't do, your Honor, was  
11           to acknowledge the role that others played.  
12           Because our interpretation of that statute, your  
13           Honor -- I'm sorry -- that rule, is that he has  
14           complied with it; and that for purposes of  
15           acceptance versus safety valve kind of information  
16           or 5K1 information that he did that which he had  
17           to do. I admit he didn't do any more than he had  
18           to do, but then, I'm not asking for any extra  
19           credit on that, your Honor. Thank you.

20           MR. MILLER: Just briefly, your Honor, if I  
21           could. Once again, I don't dispute anything  
22           factually Mr. Brown said. It's true, when asked  
23           about the specific tire popping episode,  
24           Mr. Caccavale identified two individuals for the  
25           Government who were either present or involved in

1           that situation. He did answer that, but, again,  
2           when you're talking about the calls and when I --  
3           my recollection, he was asked the question, "Why  
4           did you call Trash Hauler B?" "I don't remember.  
5           I won't talk about that call. I won't talk about  
6           who else was" -- "I was reporting to." That -- he  
7           can't accept his responsibility merely for this  
8           one fact, your Honor, when he repeatedly declined  
9           to answer anything else about the conspiracy.

10           THE COURT: Gentlemen, I have listened  
11           carefully, obviously, to the arguments of both  
12           sides with respect to the appropriate guideline  
13           range for Mr. Caccavale. And I do believe that,  
14           notwithstanding the objections, which both of you  
15           have made, that though the calculation by the  
16           probation officer is correct; that is, that there  
17           is a guideline range of 30 to 37 months that  
18           results from a finding of Offense Level of 19 and  
19           a Criminal History Category of One, I do believe  
20           that Mr. Caccavale qualifies for the acceptance of  
21           responsibility and -- notwithstanding the  
22           Government's argument. And I also believe that  
23           his role in the offense was appropriately  
24           calculated by the probation officer; again,  
25           notwithstanding the objections thereto.

1           So the question before the Court is: What is  
2           the appropriate sentence for Mr. Caccavale? The  
3           guideline range, under the calculation that was  
4           made by the probation officer, is 30 to 37 months.  
5           I think a sentence at the bottom of that range is  
6           appropriate, and so I'm going to commit Mr.  
7           Caccavale to the custody of the Bureau of Prisons  
8           for a period of 30 months. He will be placed on  
9           supervised release for 2 years thereafter.

10           You will recall, Mr. Caccavale, that I told  
11           you at the time of your plea that if you violate  
12           any of the conditions of your supervised release,  
13           you may be required to return to prison to serve  
14           additional time. But you should pay particular  
15           attention to the conditions that are imposed.

16           In addition to the standard conditions of  
17           supervised release, which will be explained to you  
18           by the probation department, you shall not commit  
19           another state, local or federal offense. You  
20           shall not unlawfully possess a controlled  
21           substance. I'm imposing a fine at the bottom of  
22           the guideline range, which is \$6,000. That fine  
23           is imposed. If that fine has not been paid by the  
24           time you're released from incarceration, sir, we  
25           still establish a schedule for payment depending

1           on your resources at that time, or whatever you  
2           resources may be. It is impossible to predict at  
3           this point what it will be.

4           There is a \$100 mandatory special assessment  
5           also which must be paid, sir. I also had warned  
6           you that you were going to have to cooperate in  
7           the taking of a DNA sample. That is a condition  
8           of your supervised release. At the moment, I  
9           think it would be appropriate to say that we will  
10          require the payment of the fine -- any remaining  
11          fine due on release at \$250 a month, and that, as  
12          I say, will be adjusted according to your  
13          resources.

14          Another thing, sir -- and this is very  
15          important, because you have never been convicted  
16          of a crime before. A person who is convicted of a  
17          felony cannot possess a firearm or any other  
18          dangerous weapon. That in itself would constitute  
19          not only a violation of your supervised release,  
20          but it would be a separate crime for which you  
21          could be prosecuted. Do you understand?

22                 THE DEFENDANT: Yes, ma'am.

23                 THE COURT: I believe that under the terms of  
24          the plea agreement there was going to be  
25          forfeiture of \$20,000?



1 MR. BROWN: That's correct, your Honor.

2 THE COURT: That, too, will be imposed.

3 There's no restitution that's been claimed in this  
4 case, and that's imposed. Once again, the  
5 \$100 mandatory assessment is there.

6 Mr. Caccavale, under the terms of your plea  
7 agreement, you've waived your right to take an  
8 appeal or challenge your sentence by any legal  
9 proceeding as long as I didn't sentence you to  
10 more than 33 months. I haven't. I've sentenced  
11 you to 30 months, sir. So you have waived those  
12 rights, sir. However, if for any reason you and  
13 Mr. Brown believe there is still an appropriate  
14 form of relief that you can seek, if you want to  
15 take an appeal, then you must file a notice of  
16 appeal within 10 days. If you cannot afford the  
17 services of an attorney to help you effect that  
18 appeal, the Court will provide one for you. Is  
19 there anything further?

20 MR. BROWN: Yes, your Honor. I'm requesting  
21 a self-surrender, your Honor. And also -- and I  
22 would ask for sometime after Labor Day, your  
23 Honor, after September 30. He simply wants to  
24 spend the the balance of the summer with his  
25 family and is prepared to surrender.

1           Typically, I guess, since everything's out of  
2           Texas these days, your Honor, I would ask for at  
3           least sixty days, your Honor, only because of  
4           concern about allowing the Government officials,  
5           the Bureau of Prisons, time to find a suitable  
6           location. And I would ask the Court to -- two  
7           things, your Honor: One, recommend a camp, for  
8           whatever it's worth, relative to the Bureau of  
9           Prisons; and, second of all, that he be located as  
10          close as reasonably possible to his family, your  
11          Honor.

12           THE COURT: I am not certain of the criteria  
13          for admission to camp, whether this kind of crime  
14          qualifies --

15           MR. BROWN: Well, to the extent that is  
16          possible, your Honor. That's why I qualified  
17          that, your Honor.

18           THE COURT: Yes. The 80th day for sentencing  
19          would be the 28th of September, but you want --

20           MR. BROWN: No. That's fine, your Honor.

21           THE COURT: Then sentencing is set for  
22          September 28th, which is a Friday, gentlemen. Do  
23          you want to check you calendars, be sure you're  
24          available?

25           MR. MILLER: If I could, your Honor, have you

1                   set a surrender date for him?

2                   THE COURT: Not yet.

3                   MR. MILLER: I'm sorry.

4                   MR. BROWN: I'm sorry. The 28th of  
5                   September? I thought that was --

6                   THE COURT: The 28th of September, yes.  
7                   That's what I'm doing now. I'm trying to find out  
8                   if it's agreeable for you.

9                   MR. BROWN: For a surrender date.

10                  THE COURT: That's the date of -- excuse me.  
11                  I'm wrong about that. I've got the wrong date.  
12                  You're right, Mr. Miller.

13                  You were asking for 60 days.

14                  MR. BROWN: Well, at least -- I'm just  
15                  concerned that it not be too short, only because  
16                  my experience is the Bureau of Prisons is never  
17                  ready.

18                  THE COURT: It's a little erratic right now.  
19                  It's been about six weeks, so that's what you're  
20                  really asking for.

21                  MR. BROWN: The 28th of September's fine, or  
22                  anytime in September is fine, your Honor.

23                  MR. MILLER: The Government asks -- if he  
24                  requires -- I think it is six weeks at this time.

25                  THE COURT: I think they are taking six weeks

1 at this point, and that would be -- let's see.  
2 That would actually be the first week -- first  
3 full week of September.

4 MR. BROWN: I would suggest perhaps, your  
5 Honor, the 5th or the 6th.

6 THE COURT: Either day is fine. Assuming  
7 that the designation has been made by that date,  
8 you should surrender, sir, wherever the Bureau of  
9 Prisons has designated you by 10:00 in the  
10 morning, or if you can't get there --

11 MR. BROWN: Twelve o'clock, your Honor?

12 THE COURT: Twelve o'clock?

13 MR. BROWN: Twelve o'clock.

14 THE COURT: Okay. Twelve o'clock. And if  
15 you are unable to self-surrender, sir, then you  
16 should go to the marshal's office and surrender to  
17 the United States marshal's office, and they will  
18 transport you to the place of incarceration.

19 Now, the request was for --

20 MR. BROWN: Wednesday, April 5th [sic], your  
21 Honor.

22 THE COURT: Excuse me?

23 MR. BROWN: Wednesday, September 5th, your  
24 Honor.

25 THE COURT: We're all confused about dates.

1           September 5th, yes. Okay. You had asked for a  
2           recommendation to camp. Again, I say I don't know  
3           whether that can be honored, but I'll make the  
4           recommendation if it can. But the important thing  
5           for me is that he be as close to his family as  
6           possible.

7           MR. BROWN: Thank you.

8           THE COURT: Because I hope that the Bureau of  
9           Prisons can accommodate that.

10          MR. BROWN: I appreciate that, your Honor.

11          THE COURT: Obviously, he has an interest in  
12          his children and they have an interest in him, and  
13          I always believed that people should be as close  
14          to those who love them as possible.

15          I will, however, caution you, sir, that the  
16          recommendations to the Bureau of Prisons is just  
17          that. I cannot require them to incarcerate you at  
18          any particular location, and indeed, many of my  
19          recommendations have been rejected for, I'm sure,  
20          perfectly valid reasons, whether be it an  
21          appropriate place for that particular individual,  
22          it's overcrowded or for whatever reason.

23          I also want to comment, gentlemen, that I  
24          used to be notified when my recommendations were  
25          not going to be followed, but the Bureau of

1 Prisons has determined it's not going to do that  
2 anymore; that we won't know anymore unless we make  
3 a specific enquiry. If you alert me that you want  
4 a specific enquiry, I can make that enquiry, but  
5 don't expect to be notified.

6 MR. BROWN: Thank you, your Honor.

7 THE PROBATION OFFICER: Usually, I get  
8 notified at the last minute, your Honor, by the  
9 marshal's office. They are kind enough to call,  
10 your Honor.

11 THE COURT: Oh, yes. You will be notified  
12 where it is, but I won't be told that my  
13 recommendation cannot be followed anymore unless I  
14 specifically ask. So we have taken care of  
15 everything except, I think, the Government has a  
16 motion to dismiss a count?

17 MR. MILLER: I do, your Honor. Under the  
18 terms of the plea agreement, the Government now  
19 moves to dismiss Count 4 as it applies to  
20 Mr. Caccavale.

21 THE COURT: That motion is granted. I think  
22 I have covered everything.

23 MR. BROWN: Thank you, your Honor.

24 MR. MILLER: Thank you.

25 (Hearing adjourned: 11:59 a.m.)

CERTIFICATE

I hereby certify that the foregoing 62 pages are a complete and accurate computer-aided transcription of my original stenotype notes taken in the Sentencing in the Matter of USA vs. Richard Caccavale, which was held before the Honorable Ellen Bree Burns, Senior U.S.D.C. Judge, 141 Church Street, New Haven, Connecticut, on July 12, 2007.

  
Kerry Angelo, LSR